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Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1409

LONNIE NORTH,

Appellant,

vs.

C. B. RUSSELL AND NATHANIEL "TRAP" HELTON, JAILER OF HARLAN COUNTY,

Appellees.

On Appeal From The Court Of Appeals Of Kentucky

BRIEF OF THE NATIONAL LEGAL AID AND DEFENDER ASSOCIATION AS AMICUS CURIAE

JAMES F. FLUG
NLADA
2100 M Street, N.W.
Washington, D.C. 20037

NANCY E. GOLDBERG
MARSHALL J. HARTMAN
JOSEPH T. GARLOVSKY
NLADA
1155 E. 60th Street
Chicago, Illinois 60637

Counsel for Amicus Curiae

Midwest Law Printing Co., Chicago 60601, Financial 6-3988

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BRIEF OF THE NATIONAL LEGAL AID AND DEFENDER ASSOCIATION AS AMICUS CURIAE

INTEREST OF AMICUS CURIAE

The National Legal Aid and Defender Association (NLADA) is a not-for-profit corporation whose primary purpose is to assist in providing effective legal services for the poor. Its members include the great majority of defender offices, coordinated assigned counsel systems, and legal aid societies in the United States. NLADA also has 4,000 individual members, most of whom are practicing attorneys who represent indigent persons in criminal cases.

The fact that lay judges often preside in Kentucky police courts and in the lower courts of over 30 other states, causes the National Legal Aid and Defender Association to fear that this practice has and will result in inferior justice for the poor man, who is the principal litigant in those courts. In view of the direct importance of this case to attorneys serving the indigent accused throughout the United States, NLADA prays that this Honorable Court will grant the relief requested by the Appellant.

OPINION BELOW

The decision of the Court of Appeals of Kentucky, No. 74-723 was rendered March 21, 1975 and is as yet unreported (..... SW 2d .....)

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THE COURT IS INVOKED

An appeal was filed in this court on May 9, 1975 and probable jurisdiction was noted on June 23, 1975.

QUESTION PRESENTED

In a state where most defendants are brought before attorney judges, does allowing lay judges to try cases that affect the liberty of the accused constitute a denial of due process of law and equal protection in violation of the Fourteenth Amendment and a de facto deprivation of the right to counsel as embodied in the Sixth Amendment to the U.S. Constitution?

STATEMENT OF CASE

The National Legal Aid and Defender Association adopts Appellant's Statement.

SUMMARY OF THE ARGUMENT

The practice, of allowing lay judges to try cases that affect the liberty of the accused, violates the constitutional rights of those against whom, by an accident of geography, a complaint is filed in districts where a lay judge is sitting and is contrary to public policy. The unfamiliarity of lay judges with criminal law and procedure necessarily results in such a lack of adherence to the legal precedents which are applied in other courts that the accused are deprived of due process of the laws and equal protection as required by the Fourteenth Amendment to the U.S. Constitution. In addition, the barrier to defense counsel's communication with an untrained judge as to the rules and legal nuances governing the defendant's rights, results in a de facto deprivation of the Sixth Amendment right to counsel as applicable to the States by incorporation into the Fourteenth Amendment. Although large numbers of persons each year receive their first impressions of the Criminal Justice System in courts where non-lawyer judges preside, these courts, by and large, fail to meet professional standards of criminal law and procedure. A first step in upgrading the lower courts must be to staff them with professionally trained personnel. Finally, the development of modern means of transportation and communication and the availability of sufficient numbers of professionally trained personnel, coupled with the current trend away from lay judge courts, should result in the discarding of an antiquated system which was utilized as an expedient to meet Seventeenth Century, not Twentieth Century conditions.

ARGUMENT

I.

THE EXERCISE OF CRIMINAL JURISDICTION BY LAY JUDGES IN KENTUCKY RURAL AREAS RESULTS IN A DENIAL OF EQUAL PROTECTION IN VIOLATION OF THE FOURTEENTH AMENDMENT.

The only courts in Kentucky having lay judges are those in cities with a population of 20,000 or less, i.e. the rural areas. (3rd-6th class cities, K.R.S. 26.140, 26.150, 26.170, 26.190, 26.200 and Ky. Const., Sec. 156). This results in a denial of equal protection to criminal defendants who, due to an accident of geography, happen to be charged with crime in a rural district. The U.S. Supreme Court, viewing geographical discrimination as applied to the question of reapportionment, noted that, "The concept of equal protection has been traditionally viewed as requiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged." *Reynolds v. Sims*, 377 U.S. 533 (1964). (Also see *Avery v. Midland County*, 390 U.S. 474 (1968) and *Moore v. Ogilvie*, 394 U.S. 814 (1969)). This principle was recently applied in *James v. Strange*, 407 U.S. 128 (1972) where the U.S. Supreme Court struck down a Kansas statute requiring recoupment of counsel fees from indigent defendants. In that case, the Court reasoned that the statute constituted a denial of equal protection because indigent criminal defendants were not treated equally with other Kansas judgment debtors. Again, the question of uniform treatment of persons standing in the same relation to governmental action was discussed in *Furman v. Georgia*, 408 U.S. 238 (1972). In voting to abolish the death penalty, Justices Douglas, Stewart, and Marshall argued that the penalty was unconstitutional because it usually fell upon the poor, the ignorant, the underprivileged, and members of minority groups.

As the Court noted in *Reynolds v. Sims*, supra, "A citizen, a qualified voter, is no more or less so because he lives in the city or on the farm." The concept enunciated in that case applies to a citizen a fortiori where it is his liberty rather than his vote that is at stake. Surely geography should play no greater roll in impeding justice for citizens appearing before lay judge courts than it does for citizens appearing at the polling place.

II.

THE PRACTICE OF ALLOWING LAY JUDGES TO PRESIDE OVER CRIMINAL TRIALS RENDERS THE SIXTH AMENDMENT RIGHT TO COUNSEL NUGATORY AND CONSTITUTES A VIOLATION OF DUE PROCESS OF LAW.

In *Gideon v. Wainwright*, 372 U.S. 342 (1963), and its companion case, *Douglas v. California*, 372 U.S. 353 (1963), the U.S. Supreme Court held that the Sixth Amendment right to the assistance of counsel was applicable to the state by incorporation into the Fourteenth Amendment. Lay judges in Kentucky exercise criminal jurisdiction over misdemeanor trials involving up to a $500 fine or one year imprisonment, hold preliminary examinations in felony cases, and issue warrants. (See Appendix to this brief. A. 12a). The U.S. Supreme Court has held that a defendant has a right to counsel in state courts at preliminary examinations in *Coleman v. Alabama*, 399 U.S. 1 (1970). In 1972, the Court also held that the right to counsel at trials extended to all indigent criminally accused facing a jail sentence. *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

However, the right to counsel is rendered illusory where counsel must argue before a judge who is not adequately trained in the law. If a judge is not able to rely

on his own knowledge of the legal merit of counsel's argument, he is apt to trust the counsel of the lawyer that he is most familiar with, as he lacks an independent standard by which to judge.

A judge who has been a lawyer is used to reading the advance sheets containing appellate and U.S. Supreme Court cases, as well as law review articles. A layman is not likely to be learned in such complex matters as the rules of evidence. The difficulty of the subject is nowhere better exemplified than in *California v. Green*, 399 U.S. 149 (1970) where the U.S. Supreme Court, reversing the California Supreme Court, held that admission of damaging statements made at a preliminary hearing did not violate the confrontation clause of the United States Constitution. It would be unrealistic to expect a lay judge who does not read current cases to rule correctly upon an issue on which even the California Supreme Court and the U.S. Supreme Court disagree.

In a 1972 study of the issue: "Lay Judges in the German Criminal Courts" by Professors Gerhard Casper and Hans Zeisel (1 J. Legal Studies, University of Chicago Law School, 135 (1972)), the authors discussed the differences in results between the handling of cases by lay judges and professional judges in Germany. With regard to representation, it was pointed out that, "As a rule, defendants must appear at trial with counsel. The exceptions are minor violations tried by the Schofengericht, where 15 per cent of the defendants were allowed to appear without counsel. Except in the Schwargericht, the majority of defendants appear with appointed counsel." Furthermore, the majority of judges rated defense counsel and prosecutor as equally competent.

The fact that the defendants were represented by competent counsel, however, did not alter the fact that the lay judges (who, in Germany, sit alongside professional judges in criminal trials) frequently view cases differently from the professional judges. The results of the study showed that the majority of cases where lay judges disagreed with professionals regarding guilt, involved evaluation of the evidence. The study found that professional judges applied stricter standards in evaluating the evidence than lay judges. However, lay judges were prepared to overcome the ambiguity of evidence in order to convict in some cases.

In cases involving sexual crimes, the study found that the lay judges tended in the direction of conviction, while the professional judges favored acquittal. This resulted from their view of the nature of the charge rather than the evidence.

Where consumer and credit fraud was concerned, the lay judges tended to acquit on the grounds that the alleged behavior was quite common in business circles. In these cases, the lay judges had misjudged the borderline between morally doubtful behavior and illegal behavior.

One interesting conclusion drawn was that lay judges tended to rely on professional judges because of their belief that the professional judges were experts. Taking this reasoning one step further, the lay judge in our system would be prone to rely on the judgment of the prosecutor or defense counsel, thinking that such a person would have a certain expertise, as was demonstrated in the record here, where Judge Russell relied on the city attorney—in effect, the prosecution for all legal advice. (Litigant's Appendix, A. 32, 37, and 52) The reliance of lay judges on the prosecutor for legal guidance has been expressly approved in one jurisdiction where in a manual for lay judges in the State of Utah, the following advice appears at Page 14:

> There will no doubt be many occasions, however, when the answer to his problem cannot be found in this book. In such case it is recommended that the justice get in touch with the county attorney of his county who is the legal advisor of the county's precinct officers.[1]

Thus, the presence of defense counsel in court, his presentation of evidence, and his argument about the legal standards is apt to fall upon deaf ears where the judge lacks an independent standard to apply and relies upon the advice of a prosecutor who has had long experience or is otherwise known to the judge. Since arguments based upon recent U.S. Supreme Court cases and areas of constitutional guarantees of due process argued by defense counsel may not be accorded to the defendant.

A misdemeanor triable by Kentucky Statutes before lay judges may raise issues of statutory interpretation, the relevance and significance of case precedents, questions of federalism and the applicability of Kentucky Court of Appeals decisions on federal Constitutional questions. Kentucky law prohibits the practice of law by one not admitted to the bar (30.010 KRS), yet the Commonwealth permits persons not qualified to be lawyers to serve as judges. What other learned profession, would elevate laymen to positions where they

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[1] Manual for Justices of the Peace in the State of Utah (1956).

would render judgments in complex professional matters affecting the public welfare, especially here involving judgments of conviction, resulting in loss of liberty?

Perhaps the practice could once have been defended by a view that minor crimes necessarily involve only simple legal issues. That view is no longer supportable in fact. The Supreme Court spoke to this point in *Argersinger v. Hamlin*, 407 U.S. 25, 33.

> We are by no means convinced that legal and constitutional questions involved in a case that actually leads to imprisonment even for a brief period are any less complex than when a person can be sent off for six months or more . . .

Argersinger holds that due process requires appointment of counsel for an indigent defendant, absent knowing and intelligent waiver, whenever the defendant faces the possibility of a sentence of imprisonment. The Court's holding compels a parallel conclusion, that due process requires trial before a law trained judge in similar cases, since without a judge competent to rule on the legal issue in his case, the defendant's right to counsel will be rendered ineffective in any case which involves substantial issues of law. (Moreover, we fear, that this court's decision in *Argersinger*, supra, is not being implemented by lay judges for they do not possess the legal knowledge and expertise to exercise the discretion to appoint required counsel.).

III.

THE LAY JUSTICE SYSTEM IS FRAUGHT WITH ARBITRARY JUSTICE RESULTING IN A DENIAL OF DUE PROCESS.

The right to a fair trial is protected by the due process clause of the Fourteenth Amendment. Although the Fourteenth Amendment does not require that a trial be free from error, it does guarantee against arbitrary action. Differences in the procedures of the various states are subject to the test of fundamental fairness. The lay justice system is so fraught with danger that it is likely to result in arbitrary action. Lay judges in Kentucky have jurisdiction over many complex matters that directly affect the liberty of the accused. Their jurisdiction results in a denial of due process of law that cannot be remedied by according the accused the right to appeal. Moreover, no showing of prejudice is necessary to invalidate a procedure that results in a denial of due process.

The U.S. Supreme Court has held that *all* defendants are entitled to a fair trial (*Adamson v. California*, 332 U.S. 46, reh. den. 332 U.S. 784 (1947); *Tumey v. Ohio*, 273 U.S. 510 (1927)). While the Fourteenth Amendment is not a guaranty that a trial shall be devoid of error, if the error is gross and obvious, coming close to the boundary of arbitrary action, there is a violation of due process, (*Roberts v. New York City*, 295 U.S. 264 (1934)). However, due process does require that differences in criminal procedures in the several states should be subject to the requirements of fundamental fairness implicit in the concept of ordered liberty *Mapp v. Ohio*, 367 U.S. 643, 655 (1961).

No matter how well-meaning a lay judge may be, there are compelling reasons why he should not be permitted to perform judicial functions in proceedings which affect the liberty of the accused. The preliminary examination at which a judge decides the important question of whether or not there is probable cause to detain the defendant has been held to be a "critical stage" of the prosecution (*Coleman v. Alabama*, 399 U.S. 1 (1970)). It is at this stage that the judge will determine whether to bind the accused over to the grand jury or to set him free.

If the judge should find probable cause to detain the accused person, his discretion extends to the question of whether to admit him to bail or commit him to jail. As Justice Jackson, concurring in *Stack v. Boyle*, noted, "The first fixing of bail . . . is a serious exercise of judicial discretion." 342 U.S. 1, 11 (1951). The result of this decision may affect the ability of the accused to assist in the preparation of his defense. Studies have shown that defendants who have been released on bail pending their trial have a significantly greater chance of being found innocent (Foote, "Compelling Appearance in Court: Administration of Bail in Philadelphia," 102 U. Pa. L. Rev. 1031 (1954); Foote, "Foreword: Comment on the New York Bail Study", 106 U. Pa. L. Rev. 685 (1958); Note, "A Study of the Administration of Bail in New York City", Ibid., 693; Kamin, "Bail Administration in Illinois", 53 Ill. B. J. 674 (1965); Rankin, "The Effects of Pre-Trial Detention," 39 N.Y. U. L. Rev. 641 (1964))

The issuance of search and arrest warrants is another delicate task which lay judges are empowered to perform. (Kentucky Rules of Criminal Procedure 13.10 and 1.06) It involves a constitutional safeguard against unreasonable invasion of the home and restraint of personal liberty. Whereas lay judges tend to apply "common sense," the question of whether an affidavit states sufficient facts to support the issuance of search or arrest warrants has troubled the judges of the highest court of our land. (See *Aguilar v. Texas*, 378 U.S. 108 (1964), *Giordenello v. United States*, 357 U.S. 480 (1958); *Draper v. United States*, 358 U.S. 307 (1959); *Beck v. Ohio*, 279 U.S. 89 (1964).

To date, the U.S. Supreme Court has not passed upon the question of the constitutionality of the practice of allowing lay judges to issue warrants. In the case of *Shadwick v. City of Tampa*, 407 U.S. 345, (1972), this Court did touch peripherally on the issue. However, the issue in that case was a narrow one, as the Court noted,

> "The sole question in this case is whether these clerks qualify as neutral and detached magistrates for purposes of the Fourth Amendment."

The case turned on the constitutionality of allowing Tampa Municipal Court clerks to issue arrest warrants for the breach of municipal ordinances. However as this Court pointed out, these clerks "may not issue a search warrant or even a felony or arrest warrant for violations of state laws." (p. 347)

In the present case, the court below in affirming the denial of Appellant's petition for habeas corpus, held that the denial of a fair trial could be cured by the right of "de novo" appeal. However, we believe that this argument does not diminish the strength of the constitutional objection. As Commonwealth police courts are not courts

of record, no court reporter will be present unless the defendant has the funds to hire a reporter for his trial. Thus, the indigent will not be able to preserve error for purposes of appeal. Indeed, many litigants do not understand the notion of an appeal; justice for them is frozen at the moment of the trial judge's decision. However, even more significant is the fact that the right to appeal will not feed the family of the poor man who was unjustly incarcerated pending his appeal, nor restore his reputation in the community, nor prevent him from losing his job. Moreover, the right to appeal cannot right the wrong that was done to an accused who has already served the full term of his sentence by the time of the appeal.

No showing of actual prejudice should be required to invalidate the procedure in this case. As Justice Clark noted in *Estes v. Texas*, 381 U.S. 532 (1965), when "a procedure employed by the state involves such a probability that prejudice will result that it is deemed inherently lacking in due process," no showing of prejudice is necessary. We believe that the procedure of permitting lay judges to preside over criminal misdemeanor trials and at preliminary examinations for both felony and misdemeanor arrestees, to issue search and arrest warrants, and to set bail is so fraught with danger that arbitrary action is likely to result.

In a recent State District Court attack on the non-lawyer justice of the peace system in Salt Lake County, Utah, a "two-tiered" court system with similar "de novo" procedures to Kentucky, where lay judges are permitted in the county, but not in Salt Lake City, the District court judge in invalidating the lay judge's power to imprison, rejected the "de novo" appeal argument, as follows:

> "The defendants nevertheless argue that the "two-tiered" system in Utah of de novo appeals meets the requirements of Due Process, if only after and by virtue of an appeal "anew" to a lawyer judge, and thus saves the system from any constitutional infirmity. But must a defendant incur the added expense, both in time and money, of an appeal in order to be afforded Due Process? I think not. The availability of a trial de novo on appeal does not guarantee a fair trial in the justice court, the court with which we are here dealing. Plaintiffs are entitled to Due Process and a fair trial in the first instance. *Ward v. Village of Monroeville*, 409 U.S. 57, 93 S. Ct. 80, 34 L. Ed. 2d 267 (1972)." (Shelmidine v. Jones, District Court—Third Judicial District Salt Lake County Utah Case No. 224948—(June 3, 1975) (A. 34a; 38a, 39a)

The foregoing analysis leads us to believe that criminal defendants in lay judge courts are denied their constitutional right to a fair trial in violation of the due process clause of the Fourteenth Amendment. The complexity of the lay judge's task requires knowledge which can only be gained by familiarity with statutory law and recent decisions. The right to appeal cannot give back what the police court trial has already taken away. Such a procedure is so inherently lacking in due process that it should be invalidated without any necessity to show actual prejudice.

IV.

THE LAY JUDGE SYSTEM IS NO LONGER JUSTIFIED BY NECESSITY AND IS CONTRARY TO THE PRESENT TREND.

The original justifications for the lay justice system were the lack of trained professionals and the inability of citizens in a less mobile period to travel to populous areas (See Beard, *The Office of Justice of the Peace in England;* McConnell, "Some Trials of the Magistrate,"

54 ABA J 37 (1968); Vanlandingham, "The Decline of the Justice of the Peace," 12 Kan. L. Rev. 381 (1942), Pesident's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts* (1967) at 34; Note, "The Justice of the Peace in Virginia; A Neglected Aspect of the Judiciary," 52 Va. L. Rev. 151 (1966)). However, the lay judge court is an anachronism. Today, most areas have an ample complement of attorneys located within a short driving distance from the farm. Moreover, if rural courthouses are intended for the convenience of defendant, the accused should have a choice as to whether he would prefer a convenient location or a courtroom where the judge is trained in the law.

The current trend in judicial reform is the adoption of unified court systems which do away with lower courts over which there is no centralized administrative control. In addition to the growing number of states which are unifying their court systems, moreover, a compilation[2] of the current laws concerning criminal jurisdiction by lay judges (A. 1a-33a), leads us to the conclusion that an increasing number of states are abandoning lay judge systems. At the present time, the laws of 15 jurisdictions exclude lay judges from hearing cases in which the defendant is charged with a crime punishable by imprisonment: Connecticut, the District of Columbia, Georgia, Illinois, Louisiana, Maine, Michigan, Missouri, New Jersey, Oklahoma, Rhode Island, Tennessee, Texas, Vermont and Wyoming. Of

[2] This compilation was the result of research and analysis performed by Rosemary Camilleri, a graduate student at the University of Chicago and was updated by Ina Marks, attorney.

these 15 jurisdictions, moreover, 11 also have precluded lay judges from presiding over preliminary hearings and issuing search and arrest warrants. Furthermore, as of August 14, 1974, as a result of the California Supreme Court decision in *Gordon v. Justice Court*, 525 P. 2d 72, lay judges are forbidden from imposing sentences of imprisonment. In June 1975, the Utah legislature amended Title 78, Sec. 5-4, according defendants the right to attorney judges where there is an option of imprisonment. (Utah House Bill No. 1—1st Special Session, 1975). These facts indicate a significant trend toward the abolition of lay judge jurisdiction over criminal matters in the various states.

A model for the states was provided by the Federal Magistrates Act, 82 Stat. 1107 (1968). That Act replaced Title 28, Chapter 43 of the United States Code which had provided for United States Commissioners who were not required to have legal training. The new law required all full-time federal magistrates to be members of the bar.

The rights of defendants in state and local courts are just as precious as those of federal defendants. We believe that, if the various state legislatures are unable to remove the taint of unconstitutionality from the present practice by abolishing the lay judge system, this court must act.

It was the consensus of the 1971 National Conference on the Judiciary that, "judges should be full-time officials, professionally trained in the law and aware of its traditional values." (Consensus Statement of the National Conference on the Judiciary," 55 J. Amer. Jud. Soc. 29, at 30 (1971)). This is not a novel view. The authors of the Magna Carta proclaimed,

> We will not make any justiciaries, constables, sheriffs or bailiffs, but from those who understand the law of the realm and are well disposed to observe it. Magna Carta XLV

Where the Supreme Court of California, recently held, in the case of *Gordon v. Justice Court*, supra, that the use of non-lawyer judges in criminal cases where a jail sentence may result was a patent denial of due process of law; they particularly noted that a 1972 state study revealed that 37 per cent of non-attorney justice court judges had no education beyond high school; at least 13 of these judges had not completed high school. (Note 7) (Hennessey, Qualification of California Justice Court Judges: A Dual System, 3 Pac. L. J. 439, 445-446).

The California opinion also directed one's attention to our existing Standards for the judiciary, by noting that the Commission on Standards of Judicial Administration of the American Bar Association emphasizes the importance of a properly educated judiciary. In its Standards Relating to Court Organization (Final Draft 1974), Section 1.21, subdivision (a), requires that all judges "should have a broad general and legal education and should have been admitted to the bar." (P. 29) The Commentary on Sec. 1.21 states that "Selecting competent judges is the most important aspect of establishing and maintaining an excellent court system. . . . They should have a breadth of education sufficient to understand the variety of problems that come before the courts. They should be professionally qualified as lawyers so that they can interpret and apply the law competently." (Id., pp. 31-32).

Moreover, it is settled in the Canons of Judicial Ethics that, "A judge should be mindful that his duty is the

application of general law to particular instances. . ." (ABA Canons of Professional and Judicial Ethics, Canon 20). Thus, a judge is obligated to apply the laws as set forth by the federal and state constitutions, legislation, and court-made precedents, rather than to do "justice" as he sees fit.

The public's image of our criminal justice system is particularly critical in the present era of close re-examination of every facet of our society.

> Trial courts of limited jurisdiction . . . have unlimited capacity to affect public attitudes toward law for better or worse. It is these courts, not the appellate courts, that the people generally know first hand. What they observe there of justice or injustice, of efficiency or bumbling, determines whether they will look upon courts with respect and pride or with cynicism. Justice Traynor, "Rising Standards of Courts and Judges," 40 Cal. S. B. J. 677 (1965)

The consensus of scholarly writing on the subject is that "careful consideration should be given to total abolition of these offices and transfer of their function to district or circuit judges who have full-time professional standing." *The Challenge of Crime in a Free Society*, at 129 (1967). Several authors have reached this conclusion after studying the lay justice systems in their states. Judge Howard K. Zimmerman has written that the use of non-professional judges has produced a discriminatory dual system of justice in Oregon, where, he says, "we have two systems of justice: one a reasonably good one in our circuit courts for the well-to-do or rich man, and the other, often a woefully poor one, in our justices' courts for the poor man," 21 Ore. L. Rev. 380 (1942). After a study of the lay judge system in Nebraska Ronald J. Dolan and William B. Fenton concluded that the qualifications of the vast majority of justices were so poor that the best solution would be "to

terminate the entire justice of the peace system," 48 Neb. L. Rev. 457, 474 (1969). A similar study of the Florida lay judge system concluded that "the astounding absence of educational qualifications for the office of justice of the peace engenders disrespect and suspicion of the court in the public's mind . . .," 18 U. Fla. L. Rev. 109, 124 (1965). In "The Justice of the Peace: Constitutional Questions," 69 W. Va. La. Rev. 314 (1967), the author examined the constitutional and legislative bases of West Virginia's lay judge structure and suggested that the system violates the due process guarantee of the Fourteenth Amendment.

Authors who have done general studies of lay judge systems across the country have agreed that the systems should be abolished. In James, *Crisis in the Courts*, after observing lay criminal judges in various states and parts of the country, it was recommended that all states should "follow the lead of those states that have simply done away with untrained minor criminal judges." James noted the observation and recommendation of the President's Commission on Law Enforcement and the Administration of Justice:

> Study commissions have pointed out the scandal of the lower criminal courts for over a century. More than thirty years ago, the Wickersham Commission concluded that the best solution to the problem would be the abolition of these courts. The commission agrees.

The improvement of our criminal justice system is one of today's most pressing problems. As the Task Force on Courts stated,

> Although the lower courts are the most important in the criminal justice system, they are the most neglected. They are the most important courts in the system because they handle the largest number of cases and because they have jurisdiction over

> many of the crimes that are more visible to the public. Yet these courts operate with meager facilities and poorly trained personnel.
>
> Task Force Report: The Courts, President's Commission on Law Enforcement and Administration of Justice (1967)

Finally, a judicial system which assures the presence of qualified counsel of right in any serious criminal case must do no less than assure the existence of a qualified tribunal as well.

As Chief Justice Burger stated, in delivering his 1975 Annual Report on the State of the Judiciary:

> "Many of the problems of the courts are closely related to the quality and competence of the major official participants . . . the contending lawyers *and the judges* . . . and the Standards of professional conduct that govern in the courts."

CONCLUSION

For the reasons stated it is respectfully submitted that this Honorable Court will grant the relief requested by Appellants.

Respectfully submitted,

JAMES F. FLUG
NLADA
2100 M Street, N.W.
Washington, D.C. 20037

NANCY E. GOLDBERG
MARSHALL J. HARTMAN
JOSEPH T. GARLOVSKY
NLADA
1155 E. 60th Street
Chicago, Illinois 60637

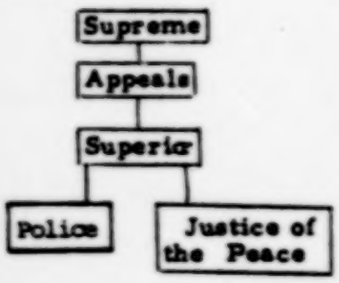
Counsel for Amicus Curiae

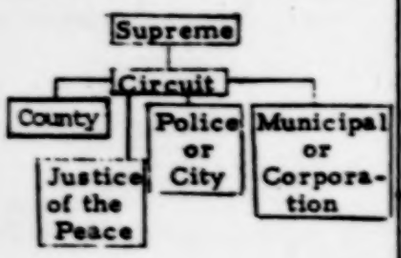
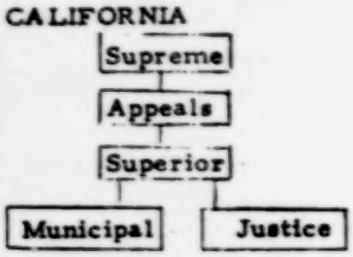
August 7, 1975

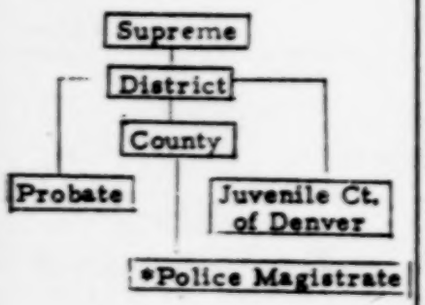
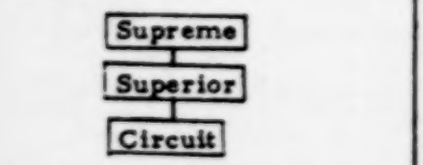
APPENDIX

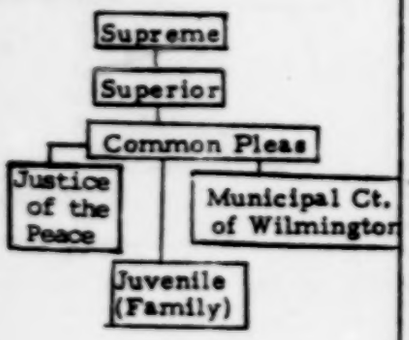
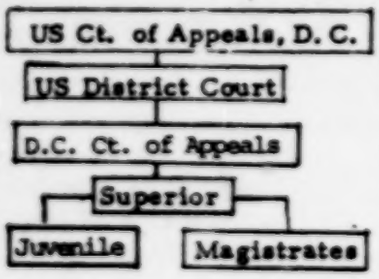
Appendix "A"

STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
ALABAMA SUPREME APPEALS CIRCUIT DISTRICT PROBATE / MUNICIPAL	Qualifications of judges. Judges of the supreme court, court of appeals, circuit court and district court shall be licensed to practice law in this state and have such other qualifications as the legislature may prescribe. Judges of the probate court shall have such qualifications as may be provided by law. Const. Art. 6, Sec. 146 Judges of Municipal courts shall be licensed to practice law in the state and have such other qualifications as the legislature may prescribe Const. Art. 6, Sec. 145 * 1973 Amendments	*Art. 6, Sec. 160 (1973) permits continuation of intermediate trial courts for four years with jurisdiction over misdemeanors, preliminary hearings and issuance of warrants. Professor Charles B. Cole, Consultant to Alabama Office of Courts Management advises that intermediate trial courts primarily county courts, now exist in 85 jurisdictions and have approximately 32 non-lawyers as judges.		
ALASKA Supreme Superior District Magistrate	Supreme, Superior, and District Court Judges must be licensed to practice law. Const. Art. IV Sec. 1 Tit. 22, Sec. 15.160 No provision requiring legal education for Magistrate; additional qualifications may be set by Supreme Court, but none as yet have been set. Tit. 22, Sec. 15.160(b)	Magistrate: jurisdiction of all misdemeanors other than violations of ordinances of political subdivision, if defendant consents in writing that magistrate may try him, or if defendant wishes to plead guilty. Tit. 22, Sec. 15.120 (6)	Magistrate may hold preliminary hearings, set, receive, and forfeit bail. Tit. 22 Sec. 15.100(5)	Magistrate may issue arrest and search warrants. Tit. 22, Sec. 15.100

STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
ARIZONA 	Supreme Court, Court of Appeals, and Superior Court Judges must be admitted to practice law in Arizona. Const. Art 6 sec 6 Tit. 12 sec 120.01 Const. Art 6 sec 22 No provision requiring legal education for Justice of the Peace, or Police Court Judge (who may be a J. P. simultaneously). Tit. 22 sec 111 Tit. 22 sec 403 (b)	J. P. has jurisdiction of such misdemeanors as petty theft, assault or battery (non-felonious), breach of peace, and other misdemeanors up to $300 fine or 6 months in county jail or both. Tit. 22 sec 301A J. P. "criminal Jurisdiction shall be limited to misdemeanors." Const. Art 6 sec 32 Police Court Judge has concurrent jurisdiction with J. P. in precincts in which city or town is located of violations of state laws committed within city limits. Tit. 22 sec 402	J. P. may hold preliminary examinations and may admit to bail. Tit. 22 secs 301, 313, & 314 Police Court judge has same powers as Justice of the Peace. Tit. 22 sec 402	J. P. may issue arrest warrant. Tit. 22 sec 311 (b) Police Court judge has same powers as Justice of the Peace. Tit. 22 sec 402

STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
ARKANSAS  (Police or City Court abolished in cities or counties with Municipal or Corporation Courts.) Tit. 22 sec 702	Supreme Court, Circuit Court Judges, must be practicing lawyers. Const. Art. 7 secs 6 & 16 Municipal Court Judge must be a licensed attorney Tit. 22 sec 704.4 No provision requiring legal education for Justice of the Peace, Police or City Court Judge Const. Art 7 sec. 41 Tit. 22 sec. 812 No provision requiring legal education for mayor.	J. P. has jurisdiction in "all matters less than felony." Tit. 43 sec. 1405 Police Court Judge: jurisdiction concurrent with circuit & justice courts for all misdemeanor cases within city limits. Tit. 44 sec 115 Tit. 43 sec 1405	J. P. may hold preliminary hearings, and may set bail Const. Art 7 sec 40 Tit. 44 sec 209 Police or City Court Judge may set bail. Tit. 44 sec 111	Justice of the Peace may issue arrest warrants. Tit. 43 sec 406 Tit. 44 sec 203 Police Court Judge may issue arrest warrant Tit. 43 sec 406 Mayor may issue arrest warrant Tit. 43 sec 406
CALIFORNIA  (Police Court)* *Allowed by Const. Art 11 sec 8½, but governed by no state statutes as each chartered city must set up & regulate its own if it so chooses.	Supreme, Appeals, and Superior Court Judges must be lawyers admitted to practice in Calif. Const. Art 6 sec 23 Municipal Court Judge must be a lawyer OR elected judge or justice of existing court superseded by municipal court for 5 years as of 1950. Const. Art 6 sec 23 *Justice Court Judge must be lawyer OR have passed exam. prescribed by Judicial Council OR be incumbent of superseded court. West's Ann. Gov. Code sec 71601	Justice Court: misdemeanors up to $1000 fine or 1 year in prison or both, except those of which other courts are given exclusive jurisdiction or cases under PEN 272† West's Ann. Crim. Proc. Code sec 1425 *PEN 272: causing or contributing to deliquency of person under 21 or inducing disobedience to court order.	Justice Court: may hold preliminary examination and may set bail. West's Ann. Pen. Code sec 808, 859, 871 *As of Aug. 14, 1974, as a result of the California Supreme Court decision in Gordon v. Justice Court, 525 P. 2d 72, non-lawyer justice court judges are prohibited from imposing sentences of imprisonment.	Justice Court may issue arrest warrants. West's Ann. Pen. Co secs 807, 808

STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
COLORADO  *in towns and cities Justice of the Peace replaced by County Court Ch. 37 sec 18-3	Supreme & District Court Judges must be lawyers. Const. Art VI secs 8, 11 County Court Judge must be practicing lawyer in class A, B, and C counties. There are 41 class D counties in which County Judge need only have high school education. Ch. 37 sec 14-3 Non-lawyer judges of County Court must attend institute on its duties and functioning. Ch. 37 sec 14-3(5) No provision requires legal education for Police Magistrate. Ch. 139 secs 86-4, 85-5	County Judge has misdemeanor jurisdiction concurrent with District Court. Ch. 37 sec 7-1 supp 65 Police Magistrate has exclusive jurisdiction ONLY of city ordinances in towns and in cities up to 50,000 population. Ch. 139 secs 84-5, 85-5, 86-4	County Judge may hold preliminary examinations and may set bail. Ch. 39 sec 2-12	County Judge may issue warrants. Ch. 39 sec 2-3 Police Magistrate in cities between 25,00 and 50,000 population "shall issue summons or warrant for violation of city ordinance." Ch. 139 sec 85-12
CONNECTICUT  (Juvenile, Common Pleas, and Town Courts abolished and replaced by Circuit Court.) Tit. 51 sec 273	Supreme, Superior, and Circuit Court Judges must all be members of the Connecticut bar. Tit. 51 sec 47 After Dec. 31, 1960, no judicial business shall be transacted by any J. P., trial justice, borough, city, town or police court judge. All such judicial business shall be deemed to be pending before the circuit court. Tit. 51 sec 273	No non-lawyer judge has any criminal jurisdiction in any court of the State of Connecticut.		

STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
DELAWARE  	Supreme and Superior or State Judges must be "learned in the law". Const. Art 4 sec 2 Judges of the Family Ct. for New Castle Co., Common Pleas Court for New Castle Co. & for Kent & Sussex Counties, and the Municipal Court of Wilmington, shall be admitted to practice law in Delaware. Tit. 10 secs 907(d), 1302(b) 1502(b), 1602(b), 1702(b). No provision requiring legal education for Justice of the Peace or for the Judge of the Juvenile & Family Court of Kent & Sussex Counties. Const. Art 4 secs 29, 30; Tit. 10 sec 1105	J. P. has misdemeanor jurisdiction "when expressly conferred by law." Tit. 11 sec 2701 Family Court of Kent & Sussex Co.: intra-family non-felonies & other misc. causes. Tit. 10 sec 1101 note	J. P. may hold preliminary hearing, and admit to bail. Tit 11 sec 5917; J. P. Rule #28 *Such Justices may not consider motions to suppress evidence Hamilton v. McLaughlin 317 A. 2d 542 (1974)	Justice of the Peace may issue all warrants. Tit. 10 sec 9501
DISTRICT OF COLUMBIA  	All judges of District of Columbia Courts must be members of D. C. bar. Tit. 11 sec 1501(b)	No non-lawyer has any criminal jurisdiction in any court of the District of Columbia.		

STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
FLORIDA Supreme District Ct. of Appeals Circuit County	Judges of Supreme Court, District Court, Circuit Court, and (unless otherwise provided by general law) of County Court must be members of the bar of Florida. Const. Art 5 sec 8 County judge in county with population less than 40,000 need not be member of bar. Const. Art 5 sec 20(c)(11) Judges of old municipal courts, ex-J. P.'s or ex-magistrates may be elected county court judges even if they are not lawyers. Const. Art 5 sec 20(d) (4) and sec 20(d)(7)	County Judge has misdemeanor jurisdiction. Tit. 5 sec 34.01(4)	County Judge, as magistrate, may conduct preliminary hearing and may admit to bail. Criminal Procedure Rules 3.122 & 3.130	County Judge, as committing magistrate, may issue arrest warrant. Criminal Procedure Rule 3.120
GEORGIA Supreme Appeals Superior City, County, Municipal Justice of the Peace	Judges of Supreme, Superior, Appeals, City, County, and Municipal Courts must be practicing lawyers in Georgia. Const. Art VI ch. 2 sec 4801 and Ch. 24 sec 2111a No provision requiring legal education for Justice of the Peace. Ch. 24 sec 402	Non-lawyer judges do not have misdemeanor jurisdiction	Justice of the Peace has jurisdiction "in examining any such person brought before him, and in committing, binding over, or discharging such person." Ch. 24 sec 1501(3)	Justice of the Peace may issue arrest warrants. Ch. 24 sec 1501(2)

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STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
HAWAII Supreme Circuit District	Supreme and Circuit Court Judges shall be practicing lawyers in Hawaii. Const. Art V sec 3 District Court Judges in districts of N. Hilo, S. Hilo, Puna & Wailuku, and Honolulu must be licensed attorneys. In other districts, except Kalawao, judges need only pass an examination. Section 604-1 statutes	District Magistrates: criminal jurisdiction up to fine, or 1 year in prison, or both. No grand jury offenses. Section 604-8 statutes	District Magistrates may conduct preliminary hearings. Section 604-8 statutes	District Magistrates: may issue search warrants. Section 604-9 statutes
IDAHO Supreme District Magistrate Probate, Police, and Justice of the Peace Courts abolished as of Jan 11,1971 Title I, sec. 103	Supreme and District Court Judges must be "learned in the law." Const. Art 5 sec 23 and Tit. 34 sec 615 Magistrate must have high school education, (but lawyer magistrates have additional duties. Ex-Probate, Police Judges, & J. P.'s are eligible to be appointed magistrates, and all magistrates must attend an Institute established by the Supreme Court. Tit. 1 sec. 2206	Magistrates (non-lawyer) have jurisdiction of misdemeanors up to $1000 fine or 1 year in county jail or both. Tit. 1 Sec. 2208 (3)(a)	Magistrate may hold preliminary examination... State v. Raaf, 16 Idaho 411, 101 Pac. 747 ...and may admit to bail. Tit. 19 sec. 2902	Magistrates (non-lawyer) may issue warrants for arrest or search. Tit. 1 sec. 2208(3)(c)

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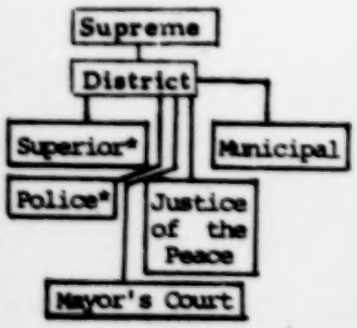
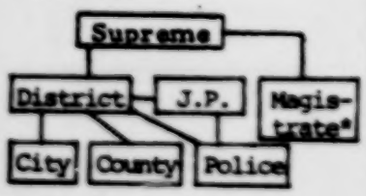
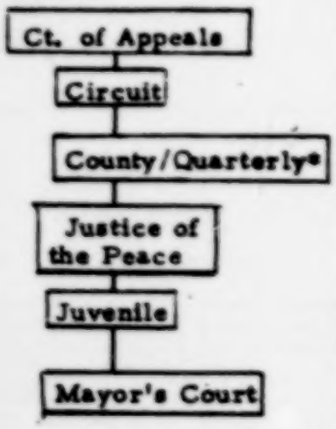
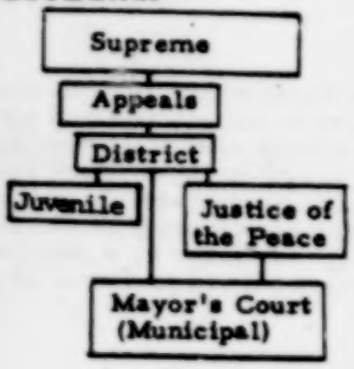
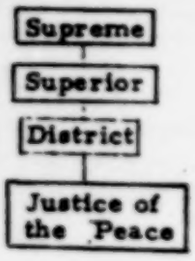
STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
ILLINOIS Supreme Appellate Circuit	"No person shall be eligible to be a Judge or Associate Judge unless he is a U.S. citizen, a licensed attorney-at-law of this State, and a resident of the unit which selects him. No change in the boundaries of a unit shall affect the tenure in office of a Judge or Associate Judge incumbent at the time of such change." Const. (1970) Art 6 sec. 11			

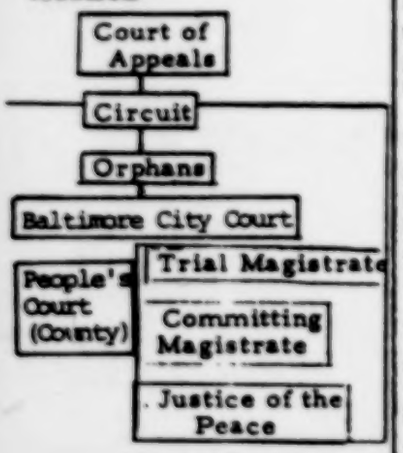
STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
INDIANA Supreme Appellate Circuit, Superior, Criminal County, Magistrate, Justice of the Peace City & Town	Judges of Supreme and Appellate Courts must be admitted to practice law in Indiana. Const. Art 7 sec. 10 Superior Court Judge must be admitted to practice law in Indiana. Tit. 4 sec 6905 Circuit Court and Criminal Court Judges must be lawyers. Const. Art 7 sec. 7 Tit. 4 sec. 5702 County Municipal Judge must be a lawyer. Tit. 4 sec. 5814 Magistrate must be a lawyer. Tit. 4 sec. 5922 City & Town Court Judges --no provision requiring legal education. Tit. 4 secs. 6027, 6002 Justice of the Peace is required to pass an examination approved by the Indiana Supreme Court. Tit. 5 sec. 108(a)	Justice of the Peace has concurrent criminal jurisdiction with criminal and circuit courts for all misdemeanors punishable by fine only; may assess fines up to $25. Tit. 9 sec. 715 In their own county, Town Court Judges have jurisdiction as J. P., concurrent jurisdiction with circuit or criminal court in petit larceny and all violations of state law up to $500 fine or 6 months in prison or both. Tit. 4 sec. 6027 City Judge has misdemeanor jurisdiction same as J. P. and concurrent with circuit & criminal courts in petit larceny, assault, battery and all violations of state law up to $500 fine or 6 mo. in prison or both. Tit. 4 sec. 6002	City and Town Court Judges may hold preliminary hearings and may set bail. Tit. 4 secs 6002, 6027	Justices of the Peace or City Judges may issue arrest warrants. Tit. 9 sec. 701

STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
IOWA  *Abolished in cities or towns where minicipal court is established. Tit. 30, sec. 602.17	Judges of all courts of record (except Police Courts) that is, Supreme, District, Superior, and Municipal Courts, must be licensed attorneys. Tit. 30, secs. 605.14, 603.20, & 604.1 Municipal Court Judge must be a practicing lawyer. Tit. 30, sec. 602.7 No provision requiring legal education for Justice of the Peace, or Police Judge or Mayor. Tit. 30 sec. 605.14 Tit. 15, sec. 363.8	J. P. has jurisdiction of all offenses less than felony in which punishment is not more than $100 fine or 30 days in prison. Const. Art 1 sec. 11	Police Court, J. P. may take preliminary informations and may set bail. Tit. 36 sec 748.1, 748.2 Mayor's Court may take preliminary informations and may set bail. Tit. 36 secs. 748.1, 748.2.	Justices of the Peace Police & Mayor's Court Judges may issue warrants. Tit. 36, sec. 748.1, 748.2

STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
KANSAS  *Exists only in certain Counties. Ch. 20 sec 2501	Supreme & District Court Judges & Magistrate must be lawyers authorized to practice in Supreme Court of Kansas Const. Art 3 sec 2(h) Ch. 20 sec 2503 City Court Judge must be lawyer admitted to practice in District Court of Kans. Ch. 20 sec 1406 County Court Judges are Probate Court Judges, who need NOT be attorneys in counties with population less than 24,000 (there are 85 such counties in Kans.) Ch. 20 sec 803 No provision requiring legal education for Justices of the Peace Ch. 80 sec 202 Police Court Judge in 1st class city or 2nd class city with pop. over 13,900 must be admitted to practice law in Kansas Ch. 13 sec 628(b) Police Court Judges in 2nd class cities with pop. under 13,900 and in 3rd class cities, need not be lawyers. J. P. may be Police Court Judge in these cities. Ch. 14 sec 201	Courts of limited jurisdiction (i. e. "all courts of the state except the supreme court, district courts, probate and juvenile courts, municipal or police courts and small debtors courts...") shall have concurrent jurisdiction with the district court in cases of misdemeanor. KSA 1971 supp. Ch. 22 sec 2601 County Judge: specifically 'trial of misdemeanor charges." Ch. 20 sec 808	County Judge may hold preliminary examination of felony charges. Ch. 20 sec 808 Second class city Police Judge may set bail. Ch. 14 sec 806	All magistrates (i. e., supreme & district court judges, and judges of courts exercising limited criminal jurisdiction) may issue arrest warrant. KSA 1971 supp. 22-2202 Second & Third Class City Police Court Judges may issue arrest warrants Ch. 14 sec 806 Ch. 15 sec 506

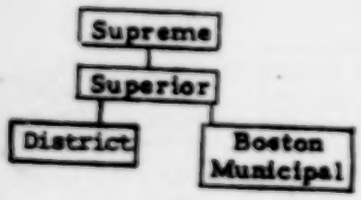
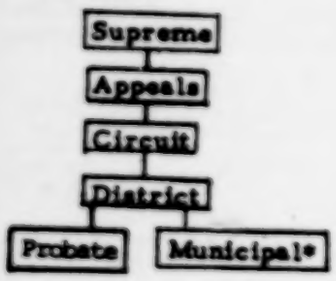
STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
KENTUCKY  *Quarterly Court is presided over by County Judge	Court of Appeals and Circuit Court Judges must be practicing lawyers. Const. sec. 114, 130 County/Quarterly Court Judges: no provision requiring legal education. Const. sec. 100 No provision requiring legal education for Justice of the Peace or Police Judge in 2nd thru 6th class cities. Const. sec. 100 Tit. 4, Ch. 26, secs. 180, 190, 200 & 150. Police Judge in 1st class city must have qualifications of Circuit Court Judge. Tit. 4 Ch. 26 sec. 140	County/Quarterly Ct. Judge has misdemeanor jurisdiction concurrent with Circuit Ct. up to $500 fine or 1 yr. imprisonment or both, and exclusive criminal jurisdiction for offenses with fines under $20. Tit. 4 Ch. 25 sec. 010 Police Judges in cities of every class have exclusive jurisdiction of misdemeanors up to $20 fine, and of all offenses against city ordinances, within their own city; and concurrent jurisdiction with Circuit Ct. of misdemeanors up to $500 or 1 year or both. Tit. 4 Ch. 26 sec. 010	County/Quarterly Ct. Judge may hold preliminary hearing and admit to bail. Tit. 4 Ch. 25 sec. 012 Justice of the Peace may hold preliminary hearing. Tit. 4 Ch. 25 sec. 012 Police Judges in cities of all classes have jurisdiction as examining ct. of all public offenses committed within the city limits, except homicide in the cases of 2nd to 6th class cities. Tit. 4 Ch. 26 sec. 020 Police Judge in 3rd class city may admit to bail. Tit. 4 Ch. 26 sec. 180	J. P. may issue "original or final process in any case within his jurisdiction." Tit. 4 Ch. 25 sec. 640 Judge of County/Quarterly Court appoints clerk to issue warrant of arrest. Tit. 4 Ch. 25 sec. 480 Police Judge in 2nd class city may issue arrest warrants in cases of unlawful assembly or rout, etc. Tit. 4 Ch. 26 sec. 160 Police Judge in 3rd class city has same powers as J. P. and may make arrests. Tit. 4 Ch. 26 sec. 180

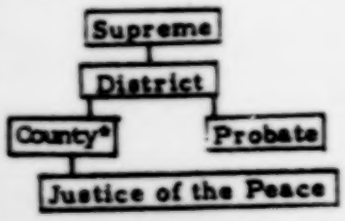
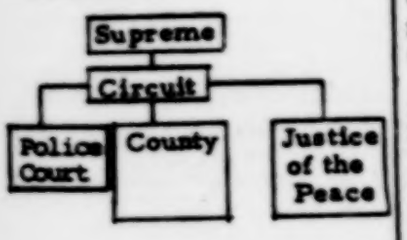
STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
LOUISIANA  	Supreme Court, Court of Appeals, and District Court Judges shall have practiced law in Louisiana. Const. Art 7 secs 6, 19, 33 Juvenile Court Judge shall have practiced law in La. Const. Art 7 sec. 96 Justice of the Peace--no provision requiring legal education. Const. Art 7 sec. 47 Mayor's Court has jurisdiction of offenses against municipal ordinances only. West's LSA:RS sec. 33:441		J. P. has "criminal jurisdiction as committing magistrate only, with power to bail or discharge in cases not capital or necessarily punishable at hard labor." Const. Art 7 sec. 48 J. P. has power to conduct preliminary examinations in cases not capital or necessarily punishable at hard labor. LSA:CCP Tit. 7 Art. 291 (3)	Justice of the Peace or Mayor of Mayor's Court may issue warrants of arrest. LSA:CCP Tit. 32 Art 931 & comment (d)
MAINE  	Supreme & Superior Court Judges must be "learned in the law." Const. Art 4 secs 1 & 101 District Court Judges must be members of state bar and are ex officio J. P.'s. Const. Art. 4 secs 157, 158 Attorneys admitted to practice in courts of Maine have all powers of J. P.'s. Tit. 4 sec. 1056 Other J. P.'s are appointed by Governor--no provision requiring legal education. Const. Art. V Pt. 1 sec. 8	Justice of the Peace has no criminal jurisdiction.	. . . . .	Justice of the Peace may NOT issue arrest warrants. Tit. 15 sec. 702

STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
MARYLAND *  	Judges of Court of Appeals, Circuit, Orphans' and Baltimore Courts must be practicing lawyers. Const. Art IV sec. 2 No provision requiring legal education for Justice of the Peace. Const. Art IV secs 1 & 2 Ann. Code Md. Art 52 secs 1 through 4. Trial Magistrates of Montgomery, Prince George's & Anne Arundel Counties must be attorneys. Ann. Code Md. Art 52 secs 98, 98A, 98B, 125, 125A, 125B.	Trial Magistrate has jurisdiction of misdemeanors. Ann. Code Md. Art 52 sec 13(a) Justice of the Peace other than trial magistrate has no criminal jurisdiction. Ann. Code Md. Art. 52 sec. 103	Trial magistrate may conduct preliminary examinations and committing magistrate may take bail. Ann. Code Md. Art 52 sec. 98B(9)(c)	Justice of the Peace may issue arrest warrant. Ann. Code Md. Art 52 secs 22-24 Committing Magistrate may issue arrest warrants. Ann. Code Md. Art 52 sec. 98B(9)(c)

The courts of limited jurisdiction are not uniform in Maryland. Trial magistrates operate on a part-time basis in 18 of aryland's 23 counties. The magistrates need not be legally trained. In felony cases, they may conduct preliminary earings to determine whether there is sufficient evidence to hold the accused for further proceedings. Trial magistrates oceedings are not of record and are without a jury. People's courts operate in seven counties. In five of these counties ere are no trial magistrates, as the people's court has jurisdiction over traffic offenses and criminal cases. Two unties, Baltimore and Dorchester, have both the People's Court and a trial magistrate. Committing magistrates are all counties but not in Baltimore City. They are usually laymen appointed by the Governor with the advice and consent the Senate. Committing magistrates serve part-time and have no power to try cases."

--NLADA National Defender Survey

STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
MASSACHUSETTS  	No provision requiring legal education for any judge	District Courts: original jurisdiction in all criminal cases. Judge may try cases up to 5 years in prison, but may not commit to state correctional institution. District Judge has jurisdiction of all misdemeanors except libel, with penalty up to 2½ years prison. MASS GEN LAWS ANN C. 218 sec 26	District Judge may hold preliminary hearings and may admit to bail. MASS GEN LAWS ANN C. 218 sec 30, C. 276 sec 57, C. 278 sec. 18	District Judge may issue warrants. MASS GEN LAWS ANN C. 218 sec. 35
MICHIGAN  *replaces Justice of the Peace, abolished by Const. Art 6, sec. 26	Judges of all courts must be licensed to practice law in Michigan. Const. Art 6 sec 19, MCLA 730.501, 730.508 and 168.467 However, incumbent justices of the peace who are not attorneys are eligible for re-election. MCLA 730.508			

STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES: Misdemeanors	Preliminary Hearings	Warrants
MINNESOTA  *Municipal Courts abolished, replaced by County Courts.	Supreme and District Court Judges shall be "learned in the law" Const. Art 6 sec 5 County Court Judge shall be "learned in the law" and a Probate Judge now in office shall be considered "learned in the law." Ch. 487 sec. 03 No provision requiring legal education for Justice of the Peace. Const. Art 6 sec 8 Ch. 530 sec. 01 ff.	County Judge has jurisdiction of all misdemeanors in county. Ch. 487 sec 18(a)(1) Justice of the Peace has jurisdiction in criminal cases up to $100 fine or 3 months in prison. Const. Art 6 sec 8	County Judge may hold preliminary hearings and may admit to bail. Ch. 487 sec 25(8), (9) Ch. 487 sec 18 (b) Ch. 629 sec 52 Justice of the Peace may hold preliminary hearings and may set bail in all cases where penalty is less than 7 years in state prison. Ch. 628 sec 31 Ch. 629 sec 52	County Judge and Justice of the Peace may issue arrest warrants. Ch. 629, secs 41, 42
MISSISSIPPI 	Supreme, Circuit, and Chancery Court Judges must be practicing lawyers. Const. Art 6 secs 150, 154 County Court Judge must have all qualifications of Circuit Judge. Title 10 Ch. 10 sec 1608 No provision requiring legal education for J. P. Const. Art 6 sec 171 Police Court Judge shall be an attorney-at-law. Const. Art VI sec 3374-103	Justice of the Peace has jurisdiction concurrent with circuit court of all crimes whose punishment does not exceed fine and imprisonment in county jail. Tit. 10 Ch. 10 sec 1831	Justices of the Peace may set bail. Tit.10 Ch.10 sec 1835	Justices of the Peace may issue arrest warrants. Tit.10 Ch.10, sec 1832

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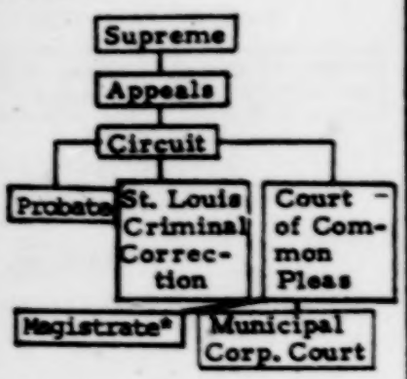
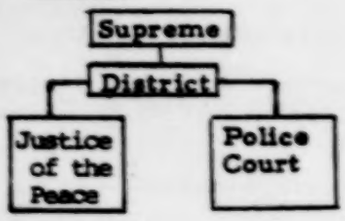
COURT SYSTEM	of Judges Having Criminal Jurisdiction	OF NON-LAWYER JUDGES: Misdemeanors	Preliminary Hearings	Warrants
MISSOURI  *replaces Justice of the Peace -Sched. 4	"Every judge and magistrate shall be licensed to practice law in this state" except present* J. P.'s or those who have been J. P.'s for 4 years --who are eligible to be magistrates. Const. Art 5 sec 25 * Constitution adopted in 1945.	Magistrate has concurrent jurisdiction with circuit court in all cases of misdemeanor, except in cities with criminal courts or as otherwise provided by law. Ch. 543 sec 010	Magistrate, being a court of record, may hold to bail. Ch. 542 sec 020	Magistrate may issue warrants for arrest. Ch. 544 sec 020
MONTANA 	Supreme and District Court Judges must be admitted to practice law in Montana. Tit. 93 secs 701, 801 No provision requiring legal education for Justice of the Peace or Police Court Judge. Ch. 7 secs 93-704 (J. P.)	J. P. has jurisdiction of petit larceny, 3rd degree assault, breach of peace, willful injury to property & all misdemeanors up to $500 fine or 6 months in prison or both. Tit. 93 sec 410 Police Court has jurisdiction in all cases under own city ordinances, and concurrent jurisdiction with J. P. of petit larceny, assault & battery, breach of peace, vagrancy, liquor laws, etc. Const. Art VIII sec 24 Tit. 11 sec 1602	J. P. or Police Judge may set bail; J. P. may hold preliminary examination. Tit. 95, secs 1103, 1201 Const. Art VIII sec 21	J. P. or Police Judge may issue arrest warrants. Tit. 95 sec 208

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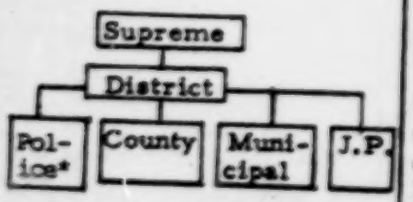
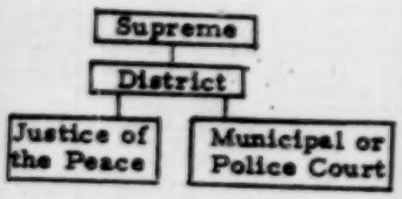
STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
NEBRASKA  *in cities without municipal court Tit. 16 sec 302.01 (County Judges exercise same powers as J. P.'s) Tit. 24 sec 502	Supreme & District Court Judges must be attorneys admitted to practice in Neb. Tit. 24 secs 202, 301 County Judge must be attorney in Neb. in all counties with population of 16,000 or more UNLESS he has served as county judge for 4 years . There are 78 counties in Nebraska with populations under 16,000. Tit. 24 sec 501.01 Municipal Judge must be attorney. Tit. 26 sec 103 No provision requiring legal education for Police Magistrate or J. P. Tit. 16 sec 302.01	County Judge has criminal jurisdiction up to 6 months in prison or $500 fine or both. Tit. 24 sec 502 Police Magistrate has misdemeanor jurisdiction up to $100 or 3 months or both. Tit. 18 sec 201 Justice of the Peace has crim. jurisdiction up to $100 fine or 3 months in prison. Const. Art V sec 18	Magistrate (which includes county, municipal, police judges, J. P.'s and mayors) may conduct preliminary hearings. Tit. 29 sec 504 Tit. 18 sec 201 Police magistrate may take bail. Tit. 18 sec 202	Police Magistrate, J. P., mayors of cities & villages, and county judges ma issue warrants for arrest. Tit. 29 sec 403 Tit. 18 sec 202
NEVADA  	Supreme & District Court Judges must be licensed to practice law in Nevada. Tit. 2 sec 020 #2, Tit. 3 sec 060 No provision requiring legal education for J. P. Tit. 4 sec 010 Municipal or Police Judge must attend course arranged by Supreme Court on court procedure, statutory amendments and other developments of law.	J. P. has jurisdiction of petit larceny, assault & battery, breach of peace & all misdemeanors up to $500 fine or 6 months in prison or both. Tit. 4 sec 370(3) Municipal Courts have same criminal jurisdiction as J. P. Tit. 5 sec 050	All magistrates (including J. P. and Police Judge) may hold preliminary hearings and admit to bail. Tit. 171 secs 192, 196 Tit. 169 sec 095	All magistrates (including J. P. and Police Judge) may issu arrest warrants. Tit. 171 sec 106 Tit. 169 sec 095

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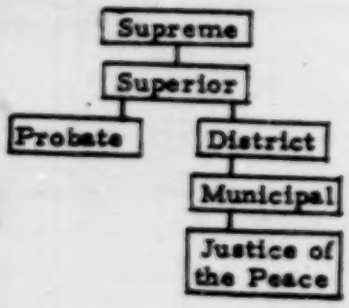
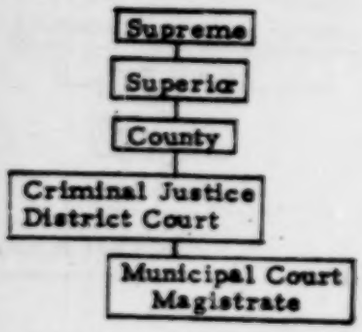
STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
NEW HAMPSHIRE  	Qualifications of all judges (appointed by Governor) are governed by "rules of common law." Opinion of the Justices (1927) 83 NH 589, 139A 180.	J. P. may NOT hear criminal cases. N. H. Judicial Council 6th Report (1956) p. 34 District Court has original jurisdiction of all crimes up to $1000 fine or 1 year or both (except in towns with municipal courts). Ch. 502A:11 Municipal Court has jurisdiction of all crimes committed within town up to $500 fine or 1 year or both. Ch. 502:18	BUT. . . . . . District or Municipal court may hold preliminary examinations and may admit to bail. Tit. 59 Ch. 596A:1 Tit. 59 Ch. 597:1 Superior Court may admit to bail. Tit. 59 Ch. 597:4	J. P. may issue warrants in criminal cases. Ch. 592-A:5 Municipal Judge may issue warrants Ch. 592A:8 Municipal & District Judges may issue search warrants. Ch. 595A:1
NEW JERSEY  Justice of the Peace and Police Court abolished. Tit. 2A sec 8-12	Supreme, Superior and County Court Justices must be admitted to practice law in N. J. Const. Art 6 sec 6 para 2 Judges of Criminal District Court must be attorneys-at-law. Tit. 2A sec 7-6 Municipal Court Magistrate must be attorney OR must hold office of magistrate, recorder, police judge or J. P. as of Jan 1, 1952. Tit. 2A sec 8-7	Municipal Court Magistrate has jurisdiction over traffic laws, municipal ordinances, disorderly persons, and offenses of lesser grade than misdemeanor or as to which no indictment by grand jury is required. Tit. 2A sec 8-21	Municipal Court Magistrate may hold accused to bail. Tit. 2A sec 8-27	Municipal Court Magistrate may issue warrants. Tit. 2A sec 8-27

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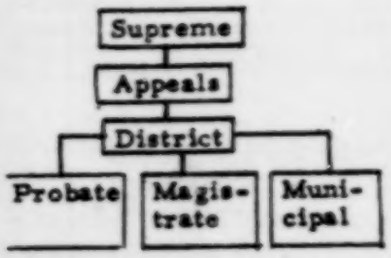
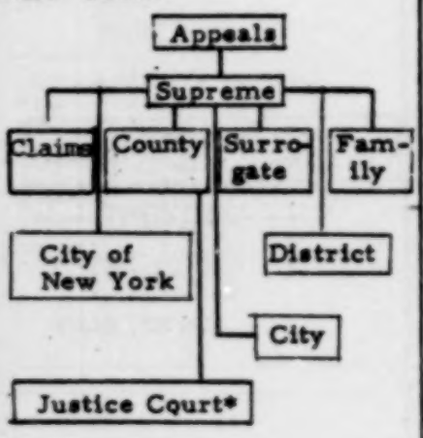
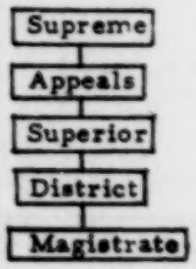
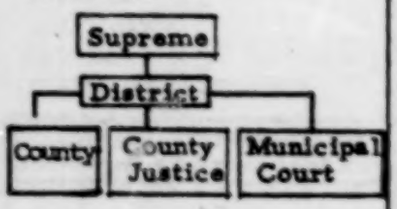
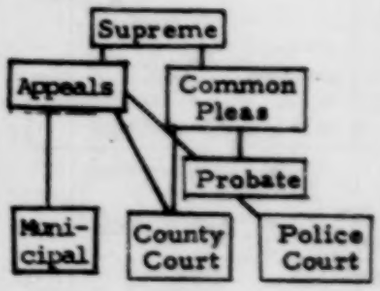
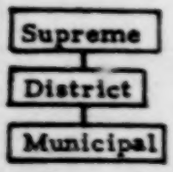
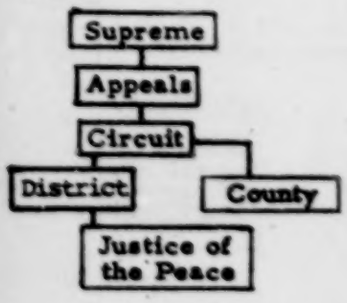
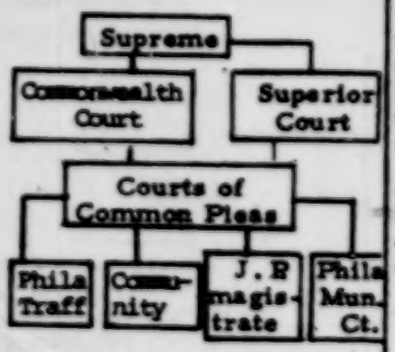
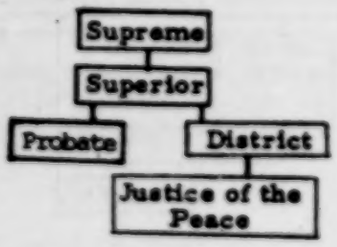
STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
NEW MEXICO  	Judges of Supreme Court, Court of Appeals, and District Court must be learned in law and be in the actual practice of law. Const. Art VI secs 8, 14, 28 Magistrate must be lawyer in districts* with population greater than 100,000. Tit. 36 Art 2 sec 1 *a county = a district and only 1 county in N. M. has more than 100,000 pop. Magistrates must attend 1 magistrate training program per year. Tit. 36 Art 2 sec 4 Municipal Court Judge qualifications are to be determined by each municipality. No provision requiring legal education. Tit. 37 Art 1 sec 3	Magistrates have jurisdiction of all misdemeanors. Tit. 36 Art 3 sec 4 Municipal Court has jurisdiction over offenses under municipal ordinances. Tit. 37 Art 1 sec 2 Jurisdiction may be vested by municipal organization charter. Tit. 14 Art 15 sec 9	Magistrate may hold preliminary hearing and may admit to bail. Tit. 36 Art 3 sec 4B; Tit. 41 Art 23 sec 22 (Rule #22)	Magistrate may issu arrest warrant. Tit. 36 Art 6 sec 2 Municipal Judge may issue subpoenas and warrants. Tit. 37 Art 1 sec 2

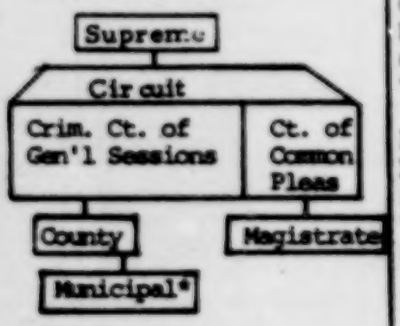
STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
NEW YORK  *includes earlier Village, Town, and City Justice Courts. UJCA Art 23	Judges of Supreme, Appeals, Claims, Surrogate, Family, City of N. Y., District, County, or City Courts must be admitted to practice law in N. Y. or already hold such judicial office. Const. Art 6 sec 20(a) Justice Court Judge (i. e., Town, Village or City Justice) who has not been admitted to practice law, is required to attend training course prescribed by state legislature. Const. Art 6 sec 20(c), UJCA sec 105	Justice Court Judge has trial jurisdiction of misdemeanors concurrent with Superior* Court but subject to divestiture thereof by Superior Ct. in any particular case. CPL Tit. B sec 10.30 and UJCA sec 2001 *"Superior Court" means the Supreme Court or a county court. CPL Tit. B sec 10.10	Justice Court Judge has preliminary jurisdiction of offenses subject to divestiture thereof in any particular case by Superior Court. CPLTit. B sec 10.30 and UJCA sec 2001 JusticeCourt Judge may set bail. CPL Tit. B sec 10.10 and UJCA sec 2001	Justice Court Judge may issue arrest warrants. CPL 120.40 and UJCA sec 2001

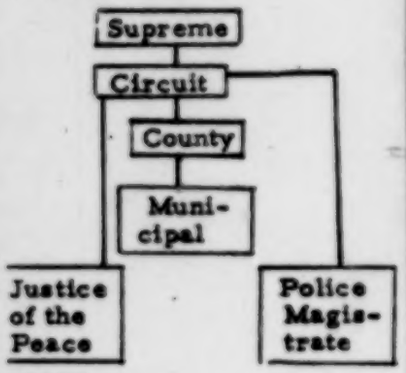
STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
NORTH CAROLINA 	No provision requiring legal education for any judge. Const. Art IV	District Court Judge may try all misdemeanors in his municipality or within 1 mile of its borders. Ch. 7A sec 199(c) Magistrate has misdemeanor jurisdiction on pleas of guilty in offenses up to 30 days in prison or $50 fine; limited jurisdiction of traffic offenses. Ch. 7A sec 273(1), (2)	District Court Judge may hold preliminary hearings. Ch. 7A sec 199(c) Magistrate may conduct preliminary examinations and set bail. Ch. 7A sec 273	Magistrate may issue warrants for search and for arrest. Ch. 7A sec 273(4), (5)
NORTH DAKOTA 	Supreme, District, and County Judges with any jurisdiction besides probate must be "learned in the law." Const. Art IV secs 94, 107, 111 County Justice must be licensed attorney in N. D. Ch. 27 sec 18-02 Municipal Judge must be licensed attorney in cities over 3,000 population unless no such person is available in the city. Ch. 40 sec 18-01 Police magistrates are municipal judges. Const. sec 113	Police magistrates may try petit misdemeanors. Ch. 29 sec 01-15	Police magistrates may act as committing magistrates and admit persons to bail. Ch. 29 sec 01-15, 07-22, 01-03, 07-11	Municipal judge may issue arrest warrants Ch40 sec 18-07, 18-08 Police magistrate may issue arrest warrants. Ch. 29 secs 01-13, 01-14

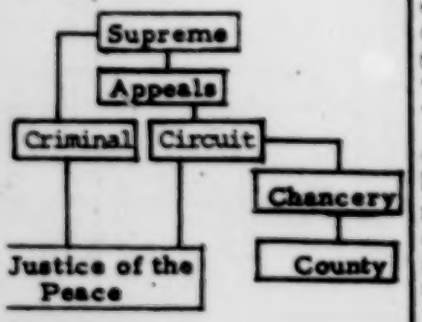
STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
OHIO 	Supreme, Appeals, Common Pleas, Municipal and County Court Judges must be attorneys in Ohio. Tit. 25:2503.01, 2501.02; Tit. 23:2301.01, Tit. 21: 2101.02, Tit. 19:1901.06, Tit. 19:1907.051 Police Court Judge:"acting police court judge" chosen by mayor, shall be reputable member of the bar, or mayor himself. Tit. 19:1903.03	Police Judge has jurisdiction of any misdemeanor committed within municipal corporation. Tit. 19:1903.06	In felonies, Police Judge may have power of county court judge to hear case and discharge, recognize or commit. If upon hearing, judge finds only misdemeanor, he may entertain jurisdiction. Tit. 19:1903.07	
OKLAHOMA  County Courts and Justices of the Peace abolished; Powers and duties taken over by District Courts. Tit. 20 sec 91.1	Judges of Supreme, District, and Municipal Courts must be lawyers licensed by some court of record. Const. Art 7 secs 3, 9, 11; Title 11 sec 783			

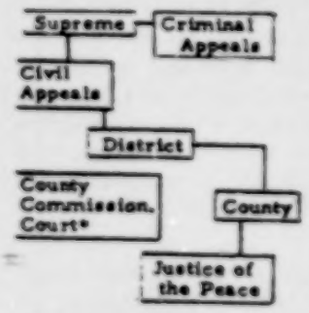
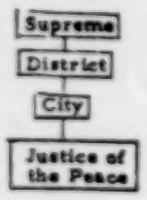
STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
OREGON 	Supreme, Appellate, and Circuit Court Judges must be members of Oregon bar. Tit. 2 secs 540(2) & 020; Tit. 3 sec 050 District Court Judge must be local attorney, member of state bar, or in counties with population greater then 500,000, have held previous judicial office in that county. Tit. 46 sec 610 County Court and Justice of the Peace--no provision requiring legal education. Const. Art VI sec 8 Tit. 51 sec 240	Justice Courts have jurisdiction of theft, assault, etc. + misdemeanors up to $500 fine or 1 year in county jail or both EXCEPT in counties with district courts where misdemeanor jurisdiction is limited to 3 months in county jail or $100 fine or both. Tit. 51 secs 040, 050 County Courts have ONLY juvenile court jurisdiction in more then 12 counties. Tit. 46 sec 092 In other counties, juvenile court jurisdiction is the county court's only judicial function, but it also transacts county business and grants preliminary injunctions in suits in the circuit court. Tit. 5 sec 030	Justice of the Peace may hold preliminary hearing and may admit to bail. Tit. 135.070	County Judge and J. P. may issue arrest warrants. Tit. 133 secs 020, 030

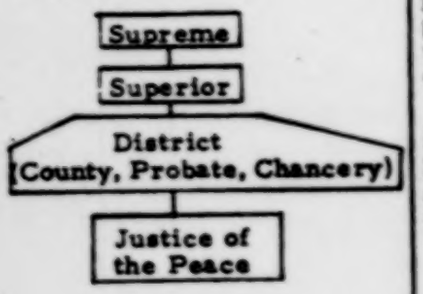
STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
PENNSYLVANIA 	Judges of Supreme, Superior, Commonwealth, Common Pleas, Community, and Municipal Courts must be members of the bar of the Supreme Court. Const. Art 5 sec 12(a) Justice of the peace must be member of bar or must complete training course. Const. Art 5 sec 12(b)	J. P. may try any offense jurisdiction of which has not been granted to any other court. Specific misdemeanor jurisdiction is given to J. P. in Erie and in Union Counties. Tit. 42 secs 391, 392	J. P. may hold preliminary hearing. Tit. 42 sec 723 Bail is set by constable in Justice Court. Tit. 42 sec 422	J. P. may issue arrest warrants. Tit. 42 sec 422
RHODE ISLAND 	Supreme and Superior Ct. Judges--no provision requiring legal education. Tit. 8 sec 3-1 District Court Judge must be member of bar. Supp. Tit. 8 sec 8-3 Justice of the Peace may be member of bar OR qualified elector. Tit. 42 sec 30-5		Justices of the Peace who are members of state bar may take bail. Tit. 12 sec 10-2	Justices of the Peace appointed by chief judge of District Ct. may issue warrants for arrest... Tit. 12 sec 6-4 ...but NOT search warrants. Tit. 12 sec 10-2

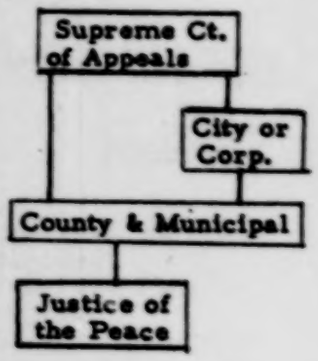
STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
SOUTH CAROLINA  *Municipal Court Judge is mayor of city or intendant. Tit. 15 sec 901	Supreme, Circuit and County Court Judges must be attorneys-at-law. Const. Art V sec 10 Tit. 15 sec 605 Municipal Court Judge and Magistrate--no provision requiring legal education. Tit. 15 sec 901; Tit. 43 sec 1	Magistrate has jurisdiction of all offenses up to $100 fine or 30 days in prison, but NO criminal jurisdiction in county with county court. Tit. 43 secs 63 & 69 supplement Municipal Judge (Mayor or intendant) has powers of magistrate in criminal cases within his city or town. Tit. 15 sec 901	Clerks of courts grant bail except in Charleston County where magistrate sets amount of bail. Tit. 17 secs 301, 302	Magistrate may issue arrest warrant. Tit. 43 sec 111 Municipal Judge (mayor or intendant) has powers of magistrate, hence may issue arrest warrants. Tit. 15 sec 901

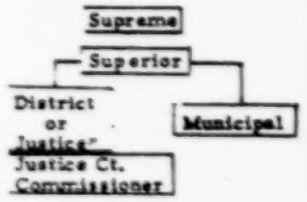
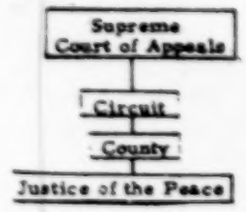
STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
SOUTH DAKOTA  	Supreme Court Judge must be "learned in the law" which means attorney-at-law in S. D. according to Jamieson v. Wiggin (1899) 12 SD 16, 80 NW 137, 46 LRA 317, 76 AmSt. Rep 585. Const. Art 5 sec 10 Circuit and County Court Judges must be 'learned in the law" Const. Art 5 sec 25 and above citation. Municipal Court Judge must be attorney-at-law licensed in S. D. Tit. 16 sec 11-8 No provision requiring legal education for Justice of the Peace or Police Magistrate. Tit. 16 sec 12-2, Tit. 16 sec 12-17.2 supp.	Justices of the Peace have jurisdiction of misdemeanors where punishment is fine up to $100 or prison up to 30 days or both. Tit. 16 sec 12-9 Police Magistrate has same jurisdiction as Justice of the Peace. Tit. 16 sec 12-17	Justice of the Peace may hold preliminary hearing and admit to bail. Tit. 23 secs 54-3, 54-6 Police magistrate may hold preliminary hearing and may admit to bail. Tit. 16 sec 12-27	Justice of the Peace and Police Magistrate may issue arrest warrants. Tit. 23 sec 54-2; Tit. 16 sec 12-27

STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
TENNESSEE 	Supreme, Appeals, Chancery, Circuit and Criminal Court Judges must be authorized to practice law in Tennessee. Tit. 17 sec 119 County Court judges who have criminal jurisdiction* may or may not be required to qualify as attorneys depending on population of county Tit. 17 sec 119 *Ct. of Gen'l Sessions of Cocke County, by private act, given limited concurrent jurisdiction with circuit & criminal courts--only example of criminal jurisdiction in county court see Tit. 16 sec 1709 (Peobate juris.) & Tit. 27 secs 202ff (Juvenile juris.) Justice of the Peace--no provision requiring legal education. Const. Art 6 sec 15	Justice of the Peace has jurisdiction to fine up to $50 for misdemeanor in case where defendant pleads guilty. Tit. 40 sec 407	Justice of the Peace may determine bail. Tit. 40 sec 406	Justice of the Peace may issue warrants. Tit. 19 sec 203

STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
TEXAS  *has none of the functions of a court but is the general governing body of the county. Const. Art 5 sec 18 commentary	Supreme and Criminal and Civil Appeals Court Judges must be lawyers. Const. Art 5 secs 2, 4, 6 District Judge must be licensed to practice law in Texas. Const. Art 5 sec 7 County Court Judge must be "well informed in the law of the state." Const. Art 5 sec 15 see commentary: law license not required. Justice of the Peace-- no provision requiring legal education. Const. Art 5 sec 19	County Judges have jurisdiction of misdemeanors of which exclusive jurisdiction is not given to J. P. and when fine is over $200 UNLESS there is a criminal district court in the county. Const. Art 5 sec 16 & CCP Art 4.07 County Judges have appellate jurisdiction from Justice Court. CCP Art 4.08 Justices of the Peace have jurisdiction in criminal cases up to $200 fine. CCP Art 4.11 Const. Art 5 sec 19	Justice of the Peace may hold preliminary hearing and may fix bail. Const. Art 5 sec 19 & commentary CCP 45.16--45.18	Justice of the Peace may issue arrest warrants. Const. Art 5 sec 19 & commentary CCP Art 45.19
UTAH 	Supreme, District, and City Court Judges must be members of bar. Const. Art VIII secs 2, 5 Tit. 78 sec 4-8 Justice of the Peace--no provision requiring legal education. Tit. 17 sec 6-5	Justices of the Peace have jurisdiction of such misdemeanors as petit larceny, assault or battery, breach of peace, and all misdemeanors punishable by up to $300 fine or 6 months in prison or both. Tit. 78 sec 5-4* *June 1975 legislature amended Act giving defendant right to have attorney J.P. where there is option of imprisonment Utah House Bill #1, 1st Special Session 1975	Justice of the Peace may hold preliminary hearing and may admit to bail. Tit. 77 secs 15-3, 15-4	Justices of the Peace may issue arrest and search warrants. Tit. 77 secs 10-4, 10-5 and Tit. 77 sec 10-5 compilers notes.

STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
VERMONT 	Supreme, Superior & District Court Judges must be practicing attorneys in Vermont. Tit. 4 Ch. 15 sec 602 No provision requiring legal education for Justice of the Peace. Tit. 4 ch. 11 sec 491	Justice of the Peace has no criminal jurisdiction (Tit. 4 ch. 11 sec 505 repealed as of July 1, 1972)		

STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES		
		Misdemeanors	Preliminary Hearings	Warrants
VIRGINIA 	Supreme Court of Appeals, Circuit and City Court Judges must be practicing lawyers or have held judicial office in the U.S. Const. Art VI secs 91, 96, 99 Municipal Court Judge must be practicing lawyer in Va. in cities with population greater than 10,000. Tit. 16 secs 1-52, 1-53 In cities with population less than 10,000 non-lawyer judge may be appointed under certain circumstances. Tit. 16 secs 1-8, 1-9(supp.) 1-54, 1-55 County Judge may be non-lawyer under certain circumstances. Tit. 16 secs 1-8, 1-9 No provision for required legal education of Justice of the Peace. Tit. 39 sec 1-7; Const. Art VI sec 108	County & Municipal Court Judges have jurisdiction of all misdemeanors in county or corporate limits. Tit. 16 secs 1-123, 1-124	County & Municipal Judges may hold preliminary hearings and may admit to bail. Tit. 19 secs 1-110(b) & 1-112 Justice of the Peace may hold preliminary hearing in certain cases, and may admit to bail. Tit. 39 sec 1-15 Tit. 19 secs 1-106, 1-110(supp)	County & Municipal Court Judges may issue warrants. Tit. 16 sec 1-27 Justice of the Peace may issue warrants. Tit. 39 secs 1-15, 1-22

STATE AND COURT SYSTEM	Education. l Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES: Misdemeanors	Preliminary Hearings	Warrants
WASHINGTON  *District Court • Justice Court; District Court Judge • Justice of the Peace. Tit. 3 sec 30.030	Supreme & Superior Court Judges must be admitted to practice in courts of Wash. Const. Art 4 sec 17 District Court Judge (and J. P.) must either be lawyer or have served as J. P. or municipal or police court judge, OR in districts with less than 10,000 population, he must have passed an examination provided by Supreme Court. Tit. 3 sec 34.060 BUT Justices of the Peace in cities of 5,000 or more must be attorneys. Tit. 3 sec 12.071 Justice Court Commissioner--no provision requiring legal education. Tit. 3 sec 42.010 Municipal Court Judge need not be lawyer in municipality with population of less than 5,000. Tit. 3 sec 50.040	Justices of the Peace have jurisdiction of all misdemeanors in their counties, within limitations. Tit. 3 sec 20.040	Justice of the Peace may hold preliminary examination. Tit. 10 sec 16.010 Tit. 10 sec 04.030 Municipal Court Judge may determine bail. Tit. 3 sec 50.210	Justice of the Peace may issue warrants Tit. 3 sec 28.020 Municipal Court Judge may issue arrest warrants. Tit. 3 sec 50.160
WEST VIRGINIA  	No provision requires legal education for Supreme Court of Appeals, Circuit Court, County Court Judges, or Justices of the Peace. Const. Art 8 secs 16,22,24	Justices of the Peace have jurisdiction of misdemeanors such as assault & battery, petit larceny, etc. Tit. 50 sec 18-1	Justice of the Peace may hold preliminary hearings and set bail. Tit. 50 sec 18-6	Justice of the Peace may issue arrest warrants. Tit. 50 sec 18-7

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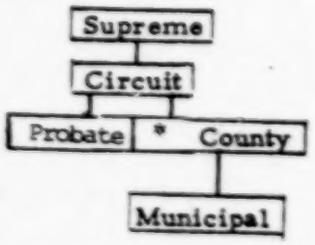
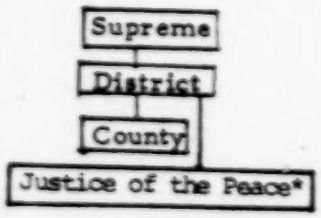
STATE AND COURT SYSTEM	Educational Qualifications of Judges Having Criminal Jurisdiction	CRIMINAL JURISDICTION OF NON-LAWYER JUDGES: Misdemeanors	Preliminary Hearings	Warrants
WISCONSIN  Justice of the Peace abolished. Const. Art 7 sec 15 repealed *County Court Judge acts as Probate Judge	Supreme Court and Circuit Court Judges must be licensed to practice law in Wisconsin. Const. Art 7 sec 24 supp. County Court Judge must be licensed to practice law in Wisconsin. W.S.A. 253.055 No provision requiring legal education for Municipal Court Judge. W.S.A. 254.01	Municipal Judge has no misdemeanor jurisdiction, but jurisdiction of city, town, or village ordinance violations. W.S.A. 254.045		Municipal Judge may issue warrants. W.S.A. 254.07
WYOMING  *abolished in counties with county courts Tit.5 sec 114.73 County Court system will become operative in 1975. Tit. 5 sec 114.77	Supreme and District Court Judges must be in actual practice of law. Const. Art 5 secs 8,12 County Court Judge must be authorized to practice law in Wyoming. Tit. 5 sec 114.14 Justice of the Peace may be authorized to practice law in Wyoming but if no qualified person has been elected to the office, a non-lawyer may be chosen by the county commissioners. Tit. 5 sec 99.2	Const. Art 5 sec 22, giving misdemeanor jurisdiction to Justice of the Peace, was repealed as of Jan. 17, 1967		Justice of the Peace may issue warrants. Tit. 7 sec 7-413

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Appendix "B"

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LARRY J. SHELMIDINE and JOHN F. REEVES, on their own behalf and on behalf of all others similarly situated in Salt Lake County, Utah, Plaintiffs, CHARLENE POLLY COOK, Intervening Plaintiff; vs. CHARLES A. JONES in his capacity as Justice of the Peace of Precinct 4 of Salt Lake County, Utah; LYNN D. BERNARD, RALPH CHILDS, LYLE GUNDERSON, WAYNE GUNDERSON, GERALDINE CHRISTENSEN, HENRY H. PRICE, WARREN D. COLE, REX C. CONRADSON, ELMAR L. JOHNSON, all in their capacity as Justices of the Peace for Precincts in Salt Lake County, Utah, Defendants.	MEMORANDUM DECISION Case No. 224948

Plaintiffs challenge the practice of permitting non-lawyer justices of the peace to hear misdemeanor cases in which a jail sentence could be imposed.[1] This challenge is founded upon three bases: That Due Process under the Fifth and Fourteenth Amendments of the United States Constitution requires that judges in criminal cases in which imprisonment may be imposed be lawyers; that the practice of permitting most of the justices of the peace

1 Section 78-5-4, Utah Code Annotated, provides that:
"Justices' courts have jurisdiction of the following public offenses committed within the respective counties in which such courts are established:
(1) Petty larceny.
(2) Assault or battery not charged to have been committed upon a public officer in the discharge of his duties or to have been committed with such intent as to render the act a felony.
(3) Breaches of the peace, committing a wilful injury to property, and all misdemeanors punishable by a fine less than $300 or by imprisonment in the county jail or municipal prison not exceeding six months or by both such fine and imprisonment."
Section 76-3-301 provides that a fine of $299 may be imposed upon a conviction of a Class B or C misdemeanor or infraction. Section 76-3-204 provides that the sentence for a Class B misdemeanor may be for a term of imprisonment not exceeding six months and for a Class C misdemeanor for a term not exceeding 90 days. Under Section 76-3-205, no person convicted of an infraction may be imprisoned.

throughout the state to be non-lawyers while at the same time requiring that judges of the city courts, whose jurisdiction is the same as the justice courts with regard to this type of offense, be lawyers, constitutes a denial of equal protection under the Fourteenth Amendment of the Constitution of the United States; that the right to counsel and, more fundamentally, the right to a fair trial, mandated by the Sixth and Fourteenth Amendments of the Federal Constitution are abridged and denied by allowing non-lawyer or lay judges to preside in any criminal case in which a jail sentence may be imposed.

By virtue of the foregoing assertions, plaintiffs are asking this Court to prohibit the defendants, each of whom is a non-lawyer or lay justice of the peace, from hearing cases involving the plaintiffs in which each plaintiff is charged with the commission of a misdemeanor offense, the conviction of which could result in imprisonment.[2] Both plaintiffs and defendants have moved for summary judgment and, to that end, have stipulated that

2 Plaintiffs Shelmidine and Reeves are charged with the crime of driving under the influence of intoxicating liquor, as is intervening plaintiff Cook, in violation of Section 41-6-44. This is a Class B misdemeanor.

there are no material facts in dispute. Those stipulated facts are more fully set out in the memoranda filed by the respective parties with two minor exceptions noted in the record during oral argument, about which there is likewise no dispute which raises any issue of fact.

Justice of the peace courts in Utah, manned by non-lawyer judges, are courts of convenience, particularly in isolated rural areas typical of most of this state in which there are few, and sometimes no attorneys. In the early days of statehood there were so few attorneys and such great distances to be covered by those attorneys who were available that the system of justice in dealing with minor criminal offenses would have broken down completely if lawyer judges had been required. Thus, while city court, district court and Supreme Court judges were, from the inception of statehood and before, required to be lawyers, both the Constitution of the state of Utah and legislative enactment left open the question of qualifications of the judges of justice courts with respect to legal background and training.

Modern transportation and communication have considerably alleviated much of the problem earlier encountered in effectuating a viable means of administering effective and speedy justice on the misdemeanor level. Nevertheless, of the 29 counties in Utah there are still eight counties with two or less resident attorneys and five counties with no resident attorney, for lawyers, whose livelihood is dependent upon the services they are able to render to people, have tended to settle in the more populous regions of the state, requiring the inhabitants in

many areas to travel some considerable distance to obtain legal counsel. The impact of this on the administration of misdemeanor offenses -- the very type of offense with which a limited-jurisdiction, lay justice of the peace most frequently deals -- is immediately apparent: One-third of the counties of the state do not have enough resident lawyers to staff the justice courts and still have a prosecutor and defense counsel. In Salt Lake County, where the heaviest concentration of lawyers is found, only one justice court judge is a lawyer.

With this background, the question before this Court is whether the historically convenient and necessary lay justice of the peace system in Utah can withstand the developing mandates of Due Process, of fundamental fairness and of equal protection. The basic predicate is not whether a lay justice of the peace can conduct an error-free trial or whether he is capable of being fair and impartial, for Due Process does not guarantee an error-free trial, Roberts vs. New York City 295 U.S. 264 S.Ct., L.Ed. 2d (1934), nor does this Court have any doubt that for the most part lay justices of the peace are fully capable of fairness and impartiality. Rather, it is whether a non-lawyer judge has sufficient legal training, background and experience to afford a misdemeanant a fair trial, the end result of which may be imprisonment. In this context, "fairness" does not mean merely impartiality. Its meaning is of constitutional necessity more encompassing. It alludes to a quality of justice which fully observes all rights, both substantive and procedural, of the citizen-defendant

who has been charged with an offense against the society in which he lives, no matter how petty. Ideally, one would hope for an entire judiciary staffed with learned judges who, by intellect and passion, are able to discern the delicate and subtle nuances extant in our constitutional system by which the rights of the individual are balanced against the power of the government. While the ideal may not be perfectly met, we come as close as humanly possible by imposing rigorous standards of training, background, experience and temperament on our judges to achieve the highest quality of justice possible. To impose less than that does not meet the fundamental constitutional requirements of Due Process for a constitutionally fair trial where loss of liberty is a possible consequence. Due Process permits no compromise between fundamental rights on the one hand and convenience or necessity on the other.

If one is entitled, under the growing concepts of Due Process and fair trial, to legal counsel in a misdemeanor case where there is a possibility of imprisonment, Argersinger vs. Hamlin, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed. 2d 530 (1972), see also Gideon vs. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799 (1963), then Due Process, the right to a fair trial and the right to counsel likewise mandate that under such circumstances only a lawyer-judge, qualified by training, background and experience to comprehend and utilize counsel's legal arguments, can impose a sentence of imprisonment, Gordon vs. Justice Court, 115 Cal. Rptr. 632, 12 Cal. 3d 323, 525 P.2d 72 (1974), cert. den. 16 Cr.L. 1483, 1484 (1975).

— // The defendants nevertheless argue that the "two-tiered" system in Utah of de novo appeals meets the

requirements of Due Process, if only after and by virtue of an appeal "anew" to a lawyer judge, and thus saves the system from any constitutional infirmity. But must a defendant incur the added expense, both in time and money, of an appeal in order to be afforded Due Process? I think not. The availability of a trial de novo on appeal does not guarantee a fair trial in the justice court, the court with which we are here dealing. Plaintiffs are entitled to Due Process and a fair trial in the first instance. Ward vs. Village of Monroeville, 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed. 2d 267 (1972). // —

This Court therefore finds and holds that the practice under Utah law which allows non-lawyer or lay justices of the peace to impose a jail sentence or imprisonment constitutes a denial of a criminal defendant's right to a fair trial in violation of the mandate of the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States. To the extent that Section 78-5-4, Utah Code Annotated, authorizes lay justices of the peace to impose imprisonment, it, too, is violative of the guarantees under the Federal Constitution of Due Process, of the right to fair trial and of the right to counsel, and is void.[3]

Accordingly, defendants' motion for summary judgment is denied, plaintiffs' motion for summary judgment is partially[4] granted, and the defendants are prohibited

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[3] It is unnecessary to address the question of whether a lay judge can impose a fine since the only matter presently before this Court is whether a lay judge can affect the "liberty" of a defendant by imprisonment.

[4] It is granted "partially" because, while the plaintiffs seek to have this Court prohibit the defendants from hearing any criminal matter which may result in imprisonment, this decision only goes so far as to prohibit the defendants from imposing imprisonment.

as lay judges from imposing imprisonment or jail sentence upon a conviction of the offenses over which they otherwise have jurisdiction. Counsel for the plaintiffs are directed to prepare and submit an Extraordinary Writ in the nature of prohibition in accordance with this memorandum decision.

Dated this 3rd day of June, 1975.

BY THE COURT:

Stewart M. Hanson, Jr.
District Judge

SMH:/rgp

ATTEST:
[illegible] CLERK
BY _____
Deputy Clerk